



# State of Wisconsin • DEPARTMENT OF REVENUE

DIVISION OF STATE AND LOCAL FINANCE • BUREAU OF UTILITY AND SPECIAL TAXES • 2135 Rimrock Road • P.O. Box 8971 •  
Madison, WI 53708-8971 • TELEPHONE: (608) 266-1594 • FAX: (608) 264-6887

## REAL ESTATE TRANSFER NEWS (RETN) NOVEMBER 2003

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Wisconsin Department of Revenue  
Division of State & Local Finance  
Bureau of Utility & Special Taxes  
P.O. Box 8971, MS 6-97  
Madison, WI 53708-8971

This newsletter may be found on the Internet at <http://www.dor.state.wi.us/ust/retn.html>

**1Q. Based upon the decision in Illinois and Washington v. National Steel Corp., et al. No. 03 C 3932, USDC (No. Dist. Ill.), September 9, 2003, has the Department changed its interpretation of 1146 transfers that are exempt from the transfer fee?**

- A.** The Department is withdrawing its answer to Question Number 6 in the October 2001 Newsletter (see below). Conveyances pursuant to Chapter 11 of the Bankruptcy Code pursuant to 11 U.S.C. § 1146(c) **are exempt from the fee only after the approval of the Plan.** This interpretation will be effective for open years per s. 77.26(7), Stats.

Link and Question 6 of the October 2001 RETN: <http://www.dor.state.wi.us/ust/retn1001.html>

6Q. We have a client that is closing a transaction under Chapter 11 of the Bankruptcy Code pursuant to 11 U.S.C. § 1146(c) "the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax." The sale is part of the overall plan and must be completed before the plan of reorganization is confirmed by the Bankruptcy Court. Will this transaction still be exempt and how do we fill out the transfer form?

A. Yes, the transaction is exempt so long as the Bankruptcy Court approves the complete plan. Whether the conveyance occurs before or after the confirmation, the critical point is that the sale is part of the approved plan. To complete the return, use exemption s. 77.25(14), Stats. for the exemption from fee and for "Type of Transfer", check "Other" and explain 11 U.S.C. § 1146(c).

**2Q. I am selling my house and am giving back a "second mortgage" which may or may not be forgiven. How is the transfer form filled out for Section VII. GRANTEE'S FINANCING, Line 44?**

- A.** More than one box must be checked. Check the box "Obtained from seller" and any additional box as to where the primary financing is obtained. In addition to a "second Mortgage", any type of "financial arrangement" from the seller such as "credit", "gift", "donation" etc. must have the box "Obtained from seller" checked in addition to any other box where the balance of the financing is obtained.